



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

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TO: OFFICE OF ADMINISTRATIVE LAW
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

FROM: KENNETH JENNINGS, Regulations Analyst
Office of Regulations Development

SUBJECT: **SERVICE DOG DEFINITION (ORD #0617-13)**

The California Department of Social Services (CDSS) respectfully submits the aforementioned regulations package for a Section 100 review to the Office of Administrative Law.

This amendment to Manual of Policies and Procedures (MPP) section 46-430(s)(2) "Service Dog" is to make changes without regulatory effect per California Code of Regulations Title 1, Division 1, Section 100(a), which allows a change that does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the MPP to be a change without regulatory effect; Section 100(a)(1), which allows for renumbering, reordering, or relocating a regulatory provision; Section 100(a)(4), which allows to revise for structure, syntax, cross-reference, grammar, or punctuation; and, Section 100(a)(5), which allows changing a reference citation.

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by public entities (42 USCS § 12132). This mandate is implemented by 28 CFR § 35.101 *et seq.* Pursuant to 28 CFR § 35.102(a), the implementing federal regulations apply to all services, programs, and activities provided or made available by public entities, with limited exceptions not applicable here. These regulations implementing the ADA, also define "service animal" (28 CFR § 35.104). The federal ADA regulation specify that they shall not invalidate or limit the remedies, rights, and procedures of any other federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them. (28 CFR § 35.103(b)). Accordingly, CDSS as a public entity, implementing a covered program (Assistance Dog Special Allowance Program (ADSA)) must define service dog in a manner that is not narrower than the definition of "service animal" set forth in the federal regulations implementing the ADA.

Welfare & Institutions Code (WIC) §§ 12553 and 12554, specify that to qualify for ADSA, recipients must have an eligible guide dog, signal dog, or other service dog. . WIC §§12553 and 12554 do not define “service dog.” Thus, these statutory sections alone would not run afoul of the ADA or its implementing regulations. However, CDSS’ Manual of Policy and Procedures’ (MPP) current definition of “service dog,” is limited to those dogs that assist individuals with a physical disability. However, the federal ADA regulations define “service animal” to include “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability...” (28 C.F.R. 35.104, emphasis added). Thus, the current MPP definition of “service dog” excludes dogs that serve individuals with sensory, psychiatric, intellectual, or other mental disabilities; effectively excluding those individuals from participation in the ADSA program in violation of the ADA. Thus, the service dog definition must be revised to be in compliance with the ADA.

As discussed above, the ADSA regulations must be as broad as, but not necessarily identical to the “service animal” definition contained in the federal regulations. Guide dogs for the blind, and signal dogs for the deaf and hard of hearing are addressed elsewhere in the ADSA regulations, and therefore, services are otherwise authorized for these individuals. MMP §46-430.1(a)(1) defines "Assistance Dog" as a guide dog, signal dog, or service dog. It is only the definition of “service dog” that is impermissibly narrow. Subdivision (g)(1) of that section defines guide dog as “...a dog that has been specifically trained, and certified by a licensed guide dog trainer under the provisions of Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code for use by a blind person to assist with his/her sight needs.” Subdivision (s)(3) of that section defines (3) "Signal Dog" as “...a dog that has been trained to alert a deaf person or a person whose hearing is impaired, to intruders or sounds.” This inclusion of the definitions of guide dog and signal dog in the current ADSA regulations address the needs of blind or deaf or hard of hearing persons in compliance with the service animal definition in 28 CFR §35.104.

As also mentioned above, 28 CFR § 35.103(b), specifies that the State or local laws may provide greater or equal protection for the rights of individuals with disabilities or individuals. Thus, the language is not required to be identical. Because this regulations package has been submitted pursuant to Title 1, Section 100 of the California Code of Regulations, CDSS is only proposing changes necessary to make the regulations compliant with federal law. “Fetching dropped items” is contained in the current MPP definition of “service dog,” and the ADA regulations do not require that be removed in order to be in compliance.

Attachments